

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

UNITED STATES OF AMERICA

PLAINTIFF

v.

CIVIL ACTION NO. 1:19-cv-551-TBM-RPM

**4.373 ACRES, MORE OR LESS,
LOCATED IN HANCOCK COUNTY,
STATE OF MISSISSIPPI;
MICHAEL CARMICHAEL; *et al.***

DEFENDANTS

ORDER OF FINAL JUDGMENT

This matter is before the Court for entry of a final judgment setting just compensation. The Court, having held a hearing on just compensation pursuant to Fed. R. Civ. P. 71.1(h), makes the following findings of fact:

1. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1338.
2. This is an eminent domain action brought pursuant to 40 U.S.C. §§ 3113 and 3114 pertaining to 4.373 acres of land located in Hancock County, Mississippi (hereinafter the “Subject Property”).
3. Prior to these condemnation proceedings, title to the Subject Property was vested in Cecilia “Gypsy” Fowler Kennedy, Joy Fowler Hano, Kerry Bryan Fowler, Donna Carmichael, and Michael Carmichael. Dkt. Nos. 1, 2, and 28-2.
4. In its Complaint and Declaration of Taking, filed August 29, 2019, the United States identified the following as interested parties to the litigation: Cecilia “Gypsy” Fowler Kennedy, Joy Fowler Hano, the unknown heirs and/or devisees of Kerry Bryan Fowler, Donna Carmichael, Michael Carmichael, and the Hancock County Tax Assessor. Dkt. Nos. 1 and 2.

5. The United States filed executed waivers of service, or completed service, on each of those parties between September 9, 2019, and December 9, 2019. Dkt. Nos. 10-14, and 16.

6. On December 6, 2019, the Hancock County Tax Assessor disclaimed interest in this litigation. Dkt No. 17.

7. Interested Party Joy Hano died on April 11, 2020. Dkt. No. 23. On January 4, 2022, the United States substituted her son and heir, Forrest B. Hano, in her place. Dkt. No. 24. Additionally, the United States added Leroy Cospelich, listed in an unprobated copy of Kerry Bryan Fowler's will as his sole heir, as a party. *Id.*

8. The United States completed service on Forrest Hano on January 25, 2022, and on Leroy Cospelich on February 5, 2022. Dkt. Nos. 26-27.

9. Title to the Subject Property passed to the United States pursuant to 40 U.S.C. § 3114(b) when the United States deposited its estimated amount of just compensation in the amount of \$5,800 on September 10, 2019. *See* Dkt. Entry dated 9/10/2019.

10. As a result of this condemnation, and by operation of 40 U.S.C. §§ 3113 and 3114, the United States has acquired the estate described in Schedule E of the Declaration of Taking. Dkt. Dkt. No. 2-7.

11. On September 17, 2019, the Court granted the United States possession of the property. Dkt. No. 9.

12. On March 21, 2022, the Court set this matter for a Hearing to Determine Just Compensation to take place on May, 10, 2022.

13. The Court held a Hearing to Determine Just Compensation in Courtroom 706 of the Dan M. Russell, Jr., United States Courthouse in Gulfport, Mississippi, at 1:30 p.m. on May 10, 2022.

14. No Defendants or Landowners, and no one claiming to be an unknown heir and/or devisee of Kerry Bryan Fowler, appeared at the hearing.

15. In its Motion requesting the Hearing, the United States submitted an appraisal valuing the property at \$5,800, and a title report stating that the following owners held ownership in the property:

- (1) Cecilia "Gypsy" Fowler Kennedy - $\frac{1}{4}$ ownership interest,
- (2) Joy Fowler Hano - $\frac{1}{4}$ ownership interest,
- (3) Kerry Bryan Fowler - $\frac{1}{4}$ ownership interest,
- (4) Donna Carmichael - $\frac{1}{8}$ ownership interest, and
- (5) Michael Carmichael - $\frac{1}{8}$ ownership interest.

See Dkt. No. 28.

16. The Court finds that as of September 10, 2019, the date that title to the subject property passed to the United States, ownership in the property was as follows:

- (1) Cecilia "Gypsy" Fowler Kennedy - $\frac{1}{4}$ ownership interest,
- (2) Joy Fowler Hano - $\frac{1}{4}$ ownership interest,
- (3) Kerry Bryan Fowler - $\frac{1}{4}$ ownership interest,
- (4) Donna Carmichael - $\frac{1}{8}$ ownership interest, and
- (5) Michael Carmichael - $\frac{1}{8}$ ownership interest.

17. Both Joy Fowler Hano and Kerry Bryan Fowler have died since creation of the United States' title report. Dkt. Nos. 1-9 and 23. The United States previously submitted a copy of Joy Fowler Hano's will showing her son, Forrest B. Hano, to be her sole heir. *See* Dkt. No. 24-1. The United States previously submitted a copy of Kerry Bryan Fowler's will showing Leroy Cospelich to be his sole heir. *See* Dkt. No. 24-2. As such, the Court finds that Forrest B. Hano is entitled to Joy Fowler Hano's share of the proceeds and Leroy Cospelich is entitled to Kerry Bryan Fowler's share of the proceeds.

18. The Court hereby finds that the fair market value on the date of taking of the property condemned was \$5,800.

Accordingly, the Court orders as follows:

19. The full just compensation payable by Plaintiff, United States of America, for the taking of the property identified in the Complaint and Declaration of Taking, Dkt. Nos. 1 and 2, filed herein shall be the sum of \$5,800, inclusive of interest.

20. Final Judgment will be entered against the United States in the sum of \$5,800 (said sum being full and just compensation) in full satisfaction of any and all claims of whatsoever nature against the United States by reason of the institution and prosecution of this action and the taking of the said lands and all appurtenances thereunto.

21. The \$5,800 in proceeds from this condemnation shall be divided in proportion to each party's ownership in the property. Upon entry of this Order, the Clerk of Court is directed to mail a check, including any accrued interest, to the following:

- (1) Cecilia "Gypsy" Fowler Kennedy: \$1,450 + accrued interest
213 Inside Road
Picayune, Mississippi 39466

- (2) Forrest B. Hano: \$1,450 + accrued interest
65423 Maple St
Mandeville LA 70448
- (3) Leroy Cospelich: \$1,450 + accrued interest
7521 Firetower Rd
Kiln, MS 39556
- (4) Donna Carmichael: \$725 + accrued interest
213 Inside Road
Picayune, Mississippi 39466
- (5) Michael Carmichael: \$725 + accrued interest
213 Inside Road
Picayune, Mississippi 39466

THIS, the 11th day of May, 2022.



TAYLOR B. MCNEEL
UNITED STATES DISTRICT JUDGE